



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Chas. F. Hemphill
County Auditor
Upton County
Rankin, Texas

Dear Sir:

Opinion No. 0-5048

Re: Under the facts submitted
is the contract made be-
tween Upton County and a
bonding company legal and
binding upon the County,
and a related question?

Your letter of January 12, 1943, requesting the
opinion of this department on the questions stated therein,
reads as follows:

"On April 13, 1942, the Commissioners
Court of Upton County entered into an agree-
ment with Rauscher, Pierce & Company of Dallas,
Texas whereby said Rauscher, Pierce & Company
was to fund all General and Road and Bridge
Warrants which were unpaid, due to lack of
funds, into funding bonds; for which the above
bonding company was to receive a fee of 6% of
all warrants so funded. Expenses of printing
and of obtaining opinion as to the legality
of the bonds was to be paid by Rauscher, Pierce
& Company. The estimated amounts to be funded
were \$45,000 for the General Fund and \$45,000
for the Road and Bridge Fund. No warrants were
funded for the year until September 18, 1942
when the Court advertised that \$32,807.76 of
General Fund Warrants and \$18,119.66 of Road
and Bridge Warrants were to be funded on Novem-
ber 9, 1942. In accordance with the contract
dated April 13, 1942 said bonds were to bear
interest at the rate of 4% and were to mature
in a period of not over six years. This inten-
tion referred to Chapter 163 of the Acts of the

Honorable Chas. F. Hemphill, page 2

Regular Session of the 47th Legislature, House Bill 153. These bonds were never issued due to the fact that an injunction suit was filed in the District Court which restrained the Commissioners from issuing such bonds. It appears that quite a large number of warrants which were to have been included in the funding deal were issued illegally.

"I will appreciate your opinion on the following:

"1. Is the contract dated April 13, 1942 (which was never advertised nor submitted to competitive bidding) legal and binding upon the Court.

"2. Will the warrants, which are outstanding, be a legal indebtedness of the County if it is found that they were illegally issued, and could payment on same be refused upon presentation."

Apparently you raise the question as to the validity of the contract under consideration because such contract was not let by competitive bids. We do not have before us the contract mentioned in your letter, therefore, we express no opinion as to the validity of such contract, except that contracts of the nature involved in this case involving special skill and experience, are not within the contemplation of the statute as to competitive bids. (Gulf Bitulithic Company v. Nueces County, 11 S. W. (2d) 305; Houston v. Potter, 91 S. W. 389; Hunter v. Whiteaker, 203 S. W. 1096; Douglas v. Myrick, 159 S. W. 422; Gibson v. Davis, 236 S. W. 202; Tackett v. Middleton, 280 S.W. 289; Wallace v. Commissioners' court, 281 S. W. 593; Roper v. Hall, 280 S. W. 289; City of Houston v. Glover, 89 S. W. 426; Article 2368a, Vernon's Annotated Civil Statutes; Texas Jurisprudence, Volume 11, page 642.)

It is stated in Texas Jurisprudence, Volume 11, page 642:

"The statute requiring that contracts shall be let by competitive bids is construed as applying only to work which is competitive in its nature; it does not control the commissioners'

Honorable Chas. F. Hemphill, page 3

court in contracting for services requiring special skill, ability, or technical learning. However, it has been intimated that a contract with architects for plans and services in superintending the erection of a building is within the terms of the statute. . . ."

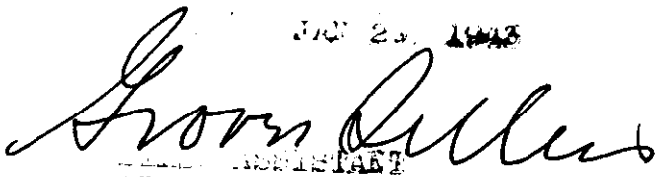
In view of the foregoing you are respectfully advised that it is our opinion that the above mentioned contract is not invalid because it was not let by competitive bids. In other words, contracts involving special skill, ability, or technical learning are not within the contemplation of the statute as to competitive bids. The fact that the contract under consideration was not let by competitive bids does not invalidate it.

With reference to your second question you are advised that if the outstanding warrants mentioned by you, were illegally issued, such warrants are void and not a valid obligation against the county. However, it is to be understood that we express no opinion as to the validity of such warrants since we have no information whatsoever pertaining to such warrants. In connection with what we have heretofore said, we feel it proper to state that we express no opinion as to the liability of the county to pay a reasonable value for the services, goods or merchandise or whatever was obtained by the county by reason of said warrants.

In connection with your second question and what we have heretofore said we direct your attention to our opinions Nos. 0-2880 and 0-4558, copies of these opinions are enclosed herewith.

Yours very truly

ATTORNEY GENERAL OF TEXAS

JUN 23 1943

 ATTORNEY GENERAL

By



Ardell Williams
 Assistant

AW:db

Enclosures

